

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

VERONICA GARCIA,

Plaintiff,

v.

Case No. CIV-19-00641

**DEFENDANT MICHAEL MARTINEZ,
STATE OF NEW MEXICO and its subsidiary
entities, NEW MEXICO CORRECTIONS DEPT.
and WESTERN NEW MEXICO
CORRECTIONAL FACILITY,
DEFENDANT ROBERT A LUCERO ORTEGA,
Warden at the Western New Mexico Correctional
Facility, and DEFENDANT PETE PEREZ, Deputy
Warden at the Western New Mexico Correctional
Facility,**

Defendants.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §1441(a) and 1446(a), Defendants, Michael Martinez, State of New Mexico, New Mexico Corrections Department, Western New Mexico Correctional Facility, Warden Roberta Lucero Ortega, and Deputy Warden Pete Perez (*hereinafter* known as “Defendants”), through their attorneys, Robles, Rael, & Anaya, P.C. (Luis Robles and Marcus J. Rael), give Notice of Removal to this Court of the civil action filed in the First Judicial District Court for the State of New Mexico, County of Santa Fe, Cause No. D-101-CV-2019-01334 (“State Court Action”), by Plaintiff, Veronica Garcia, and as grounds therefore state:

1. On May 14, 2019, Plaintiff filed a Complaint for Civil Rights Violations, Violations

of the First Amendment, Assault, Battery, and Violations of the New Mexico Constitution under the New Mexico Tort Claims Act (*hereinafter* referred to as “Complaint”). An endorsed copy of the Complaint is attached hereto as **Exhibit A**.

2. On June 5, 2019, Plaintiff mailed copies of her Complaint and Summons to Defendants, State of New Mexico, New Mexico Corrections Department, Western New Mexico Correctional Facility, Warden Roberta Lucero Ortega, and Deputy Warden Pete Perez. Plaintiff filed her Returns of Service in State Court. Plaintiff attached U.S. Mail certified mail-return receipt cards with her Returns of Service. The U.S. Mail certified mail-return receipt cards are signed by NMCD or Governor’s office personnel. However, none of the U.S. Mail certified mail-return receipt cards clearly state when (*i.e.* the date) the named-Defendants received the envelop in the mail. Without that date, the State Court record does not contain sufficient information to determine if thirty (30) days have run from the date Defendants received copies of the Summons and Complaint in the mail.

3. On June 6, 2019, Plaintiff personally served Defendant Michael Martinez with a Summons and Complaint.

4. Upon information and belief, this Notice of Removal is timely because it is filed within 30 days of service upon Defendants.

5. Pursuant to 28 U.S.C. § 1446(d), copies of the Notice of Removal will be promptly given to all adverse parties and a copy of the Notice of Removal will be filed with the Clerk of the First Judicial District Court, County of Sante Fe, State of New Mexico.

6. The claims stated against Defendants in this case are subject to the jurisdiction of this Court pursuant to 42 U.S.C. § 1983 as follows:

a. This Court has original jurisdiction because Plaintiff's Complaint is founded on a claim or right arising under the Constitution, laws or treaties of the United States.

b. An actual controversy exists because Plaintiff's Complaint alleges that Defendants violated Plaintiff's civil rights.

7. This Court has federal question jurisdiction. Plaintiff's right to bring an action for the violation of her civil rights was created by federal law, specifically 42 U.S.C. § 1983.

8. A federal question appears on the face of Plaintiff's Complaint. There is an actual controversy.

9. Pursuant to Rule 81.1(a) of the Local Rules of the United States District Court for the District of New Mexico, Defendants will, within twenty-eight (28) days, file a Notice of Filing of State Court Record and certified copies of the pleadings filed in the First Judicial District Court for the State of New Mexico, County of Santa Fe, in Cause No D-101-CV-2019-01334.

Respectfully submitted,

ROBLES, RAEL & ANAYA, P.C.

By: /s/ Luis Robles
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I hereby certify that on this 15th day of July, 2019, the foregoing was served via the CM/ECF system and served via electronic mail as follows:

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